IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 8950 OF 2005.

Samiullah Khan & anr. ... Petitioners.

V/s.

M/s Umang Hotels Pvt Ltd. & ors. ... Respondents.

Shri P.B.Shah for the petitioners.

Shri Madhav Jamdar for the respondents.

CORAM : V.C.DAGA, J.

DATED : 22.12.2005.

P.C. :

. This petition is filed at the instance of the the tenant-original defendant Nos. 1 and 3 to challenge the judgment and order dated 18.11.2005 passed by the 9th Adhoc Additional District Judge, Pune, in Civil Appeal No. 490 of 1998, confirming the judgment and decree dated 29.4.1998, passed by the trial Court in Civil Suit No. 267/97, directing the petitioners to hand over vacant possession of the suit premises together with the building standing thereon bearing CTS No.60, Municipal House No.16, Wilson Garden, Pune ('suit premises' for short).

Factual Matrix:

2. Factual matrix reveals that the respondent

No.1 is a company duly registered under the provisions of the Companies Act, 1956, engaged in the business of running a hotel. The respondent No.1 filed a suit against the petitioners-tenants claiming decree for eviction and possession of 3 grounds : firstly, that the premises is needed for their use and occupation for establishing and running hotel business; secondly, that the tenants have carried out unauthorised construction without prior permission of the landlord and the planning authority; and thirdly, that the premises were used for immoral purposes for which petitioner No.1 is facing criminal prosecution under sections 6 and 7 of the Immoral Traffic (Prevention) Act. The said suit came to be registered as Civil Suit No. 267/1997 on the file of Small Causes Court, Pune.

3. On being summoned, original petitioners-defendants appeared and filed their written statement denying all the grounds on which decree for eviction was sought. Issues relevant to the rival pleadings were struck. Parties were permitted to lead oral and documentary evidence.

4. On appreciation of evidence on record, the trial Court was pleased to hold that the respondents-landlord have proved their bonafide need for business purposes. That the tenants-

petitioners have constructed 3 rooms with bricks and cement covered with RCC slab to house their staff members working in their hotel. The trial Court also concluded that the construction was of permanent nature and rejected the defence of the defendants that the constructed structure was not of a permanent nature. The defence taken was pregnant with the admission that the tenant did construct some structures in the suit premises. The trial Court, however, refused to grant decree on the ground that the premises was used for immoral purposes.

5. The petitioners, not being satisfied with the judgment and decree of the trial Court, preferred an appeal before the lower appellate Court. The lower appellate Court after hearing the parties was pleased to confirm the judgment and decree of the trial Court and also reversed the finding of the trial Court with respect of non-establishment of ground with regard to the use of the suit premises for immoral purposes. In otherwords, lower appellate Court thus decreed the suit on all the grounds raised in the suit and confirmed the judgment and decree for eviction passed by the trial Court.

6. Being aggrieved by the aforesaid judgment

and decree of the Courts below the petitioners have preferred this petition under Article 227 of the Constitution of India to contend that the Courts below have committed serious error of law in decreeing the suit and that the lower appellate Court erred in granting decree even on the ground which was rejected by the trial Court, without their being cross objections or appeal at the instance of the original plaintiff. It is further contended that the lower appellate Court failed to consider the provisions of O. 41 Rules 27 & 28 of the Code of Civil Procedure and also failed to consider that the issue with respect to the illegal construction is subjudice before the Corporation Court; wherein legality of the notice issued by the Corporation seeking demolition of the unauthorised structure was challenged. It is further contended that the respondent-Company was incorporated only with an evil intention and motive to obtain a decree of eviction from the Court on the ground of bonafide requirement against the petitioners-tenants without having real bonafide need.

7. Learned Counsel appearing for the petitioners reiterated the aforesaid grounds while arguing this petition.

Consideration:

8. Having heard learned Counsel for the petitioner, none of the contentions sought to be pressed into service can be accepted to hold that the judgment and decree passed by the Courts below is perverse and unsustainable in law.

9. If one turns to the findings recorded by the Courts below, it would be clear that the concurrent findings of fact are suffered by the petitioners, so far as bonafide need and unauthorised construction carried out by them in the suit premises are concerned. It is no doubt true that petitioners are running hotel business in the suit premises. It is also true that the plaintiff-company has purchased this property to establish business of hotel. It is also true that the Director of plaintiff-Company is also a director in some other companies, who are engaged in the business of running hotels, but by no stretch of imagination it can be said that the plaintiff-company has not proved its need or that they are not in need of the suit premises. Each company is an independent corporate entity. Each company has independent existence in the eye of law. Merely because some directors are common cannot, by itself take away the right of the company to establish its business. It is fallacious to contend

that the company intended only to evict the tenants from the suit premises. The suit premises is being used by the petitioners for running hotel business. This by itself is sufficient to establish that the suit p;remises is suitable for establishing hotel business. It is not in dispute that the plaintiff-respondent No.1 has financial capacity to establish hotel. They have also expertise to run the said business. In this view of the matter, there is absolutely no scope to doubt their bonafides. The concurrent findings of fact recorded by the Courts below cannot be said to be perverse.

10. So far as unauthorised construction of 3 rooms by the defendants- petitioners is concerned, it is not in dispute that the said rooms are constructed by the defendants, without taking prior permission either of the landlord or planning authority or the Corporation. It is also not in dispute that the Corporation has issued stop work notice to the petitioners when unauthorised construction work was in progress. Petitioners did not pay heed to the said notice ,but chose to challenge the same in the civil Court and obtained injunction against the Corporation and the suit is still pending in the Corporation Court. Under the order of injunction constructions were made.

11. On being asked, learned Counsel for the petitioner could not produce any sanction for the construction done, from the planning authority or from the Corporation or any consent of the landlord. On the contrary, there is material available on record to conclude that the construction was illegal.

12. Lastly, it was sought to be contended that the structure is not of a permanent nature. One fails to understand concept of permanent structure sought to be understood by the petitioners. The 3 rooms are constructed in bricks and cement covered with RCC slab in the open portion of the suit premises. Both the Courts below have recorded a concurrent finding of fact that construction of these 3 rooms is unauthorised and of permanent nature and action for demolition is pending against the petitioners-tenants. In this view of the matter, it is not possible on the basis of the evidence available on record to conclude that the concurrent findings of facts recorded by the Courts below are perverse and/or unsustainable in law.

13. So far as third ground upheld by the lower appellate Court in the absence of appeal or cross objection is concerned, one has to take into account provision of O.41 R.22 of the Code of Civil

Procedure which clearly permits any respondent to support the decree even without preferring any appeal or cross- objection against the decree or any part of the decree to challenge the adverse finding suffered by him. In this behalf, readily available judgment of this Court in the case of **Nanibai vs. Mukundrao 1981 Mh.L.J.471**; **Vithaldas vs. Mansukhlal 1980 Mh.L.J. 612 (para 13)** can conveniently be relied upon which has made the legal position clear. The contention thus, raised in this behalf, is devoid of any substance and the same is liable to be rejected.

14. So far as question of pending prosecution against the petitioners is concerned, the same is not disputed by Shri Shah, learned Counsel for the petitioners. During the course of his submission, he categorically admitted that the said proceeding is still pending and the same is yet to be culminated in conviction. He thus, submitted that unless petitioner is convicted,decree under sec. 13 (1)(c) of the Bombay Rent Act is not permissible. He relied upon judgment of the Apex Court in the case of **Anirudha Kerlekar vs. Smt. Jankibai Bedekar (1991) 1 SCC 649**.

15. Before considering the merits of the above submission, let me turn to the text of section

13(1)(c) which reads as under:

> "13. When landlord may recover possession-(1) Notwithstanding any contained in the Act, but subject to the provisions of sections 15 and 15-A, a landlord shall be entitled to recover possession of any premises, if the Court is satisfied-
>
> (c) that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any provisions of clause (a) of sub-section (1) of section 394 or of Section 394-A of the Bombay Municipal Corporation Act; or"

Above section contemplates illegal use of the premises. If mere use for immoral purpose is established, that by itself is sufficient to sustain the finding. Raid in the suit premises of the petitioner for having committed an act prohibited by the provisions of Immoral Traffic (Prevention) Act is not in dispute. The use of the premises for immoral purpose is not in dispute. Pendency of the criminal prosecution is not in dispute. In this view of the matter, finding recorded by the Courts below cannot be faulted with. Conviction in a criminal prosecution may be one of the additional grounds to invoke section 13(1)(c) but that alone cannot be said to be the requirement of the entire section.

16. Assuming for the sake of argument that the petitioners may be right in their submission and even if this finding is set aside on this count and held to be bad in law, even then entire decree cannot be set aside. The same is liable to be confirmed at least on 2 other grounds discussed above. In this view of the matter, petition is devoid of any substance and the same is liable to be dismissed in limine.

17. At this stage, learned Counsel for the petitioners sought eight weeks time to vacate the suit premises, to approach higher Court. Learned Counsel for the respondent has no objection for grant of time subject to filing usual undertaking in this Court. Accordingly, petitioners are granted 8 weeks time to approach higher Court, subject to filing an undertaking that in the event they fail in the appeal, they shall vacate the suit premises without any demur or excuse and that they shall not create any third party interest in the suit premises. Undertaking to be filed within 3 weeks from today.

(V.C.DAGA,J.)